

ESA Overview Module 7 – Section 11, Penalties and Enforcement

Types of Penalties (slides 4 - 6)

There are two types of penalties assessed for violation of any part of the Endangered Species Act and any regulation, permit, or certificate authorized under the Act. Civil violations are enforced administratively, usually within the DOI or Commerce Solicitor's Office. Criminal violations are enforced judicially, in U.S. District Court; more about this later.

The Endangered Species Act assesses civil penalties when a violation was an accident, mistake, or oversight. A civil penalty requires a lower burden-of-proof than a criminal penalty. To quantify things, a civil penalty requires that the fact be likely to be more true than untrue with 51 percent certainty. A criminal penalty requires the much higher "proof beyond a reasonable doubt."

In a civil penalty, a fine is usually assessed as compensation for the loss of the plant, fish, or wildlife, but no jail time is possible. Forfeiture of the species taken in violation is expected.

Criminal penalties require the higher burden-of-proof, but when convictions occur, the consequences can be more severe. Fines may be larger, jail time may result, forfeiture of the species and any equipment used in any part of the violation can occur. Federal permits, including hunting and fishing licenses, leases, or agreements, may be suspended or revoked.

Civil Penalties (slides 7 - 8)

Civil Penalties

Civil penalties can apply to any person, any importer or exporter of species who knowingly violates **any** provision of the Act, or any of the Act's permits, certificates, or regulation designed to implement Section 9, **except** record keeping and report filing regulations. A knowing violation of Section 9 – the "taking" provision -- carries a maximum \$25,000 fine for each violation.

An example: an alligator shoe importer knows he needs to file paperwork to import shoes into the United States, but he found the paperwork too cumbersome. He intentionally didn't fill it out completely. Thus, his knowledge of a violation of the Act is established ... and he could be fined.

Civil penalties involve only the assessment of fines; not jail time. But monetary damages for knowing violations of the Act or violations of import/export rules can be substantial – up to \$25,000 for **each** violation. Fines for non-Section 9 violations can cost up to \$12,000 for each violation. Each violation can be counted as a separate offense, so fines can add up quickly.

Another example, a hunter shoots a grizzly bear instead of a black bear. This could be a civil violation ... but it's a hunter's responsibility to be able to identify the species he's hunting, and to be able to differentiate between similar-looking species.

A "non-knowing" violation – not knowing, non-Section 9 offense -- is a violation unrelated to take. A woman finds a whooping crane feather and sticks it in her hat band. A law enforcement officer asks where she got it. She simply found it and picked it up. She just didn't know that possession of a feather from an endangered species was a violation.

When could you be exempted from a civil penalty and still take a listed species? If you are protecting yourself or someone else from harm. Civil penalties aren't assessed if someone acted in self-defense that harmed or killed a listed species.

Exemption from civil penalties for committing a prohibited act, such as take, can be granted if the preponderance of evidence shows the defendant believed, in good faith, he was acting to protect himself, a member of his family, or any other person from bodily harm from any listed species.

A third example: it's perfectly legal to kill a grizzly bear that's about to eat you, or someone else. But such a claim must prove valid. If forensic evidence shows the bear was shot from a great distance, or was shot from behind while running away from the shooter, that's not a valid take. And the animal in question must be capable of harming you. Killing a Canada lynx in defense of life would be a stretch for an adult.

Successful prosecutions for illegal take are quite common. Civil cases are initiated by the Solicitor and the U.S. Attorney's Office's civil division if they go to trial.

Criminal Penalties (slides 9 - 14)

Criminal Penalties

The key word in criminal violations is "knowingly".

It means knowing what species you are importing or selling. And in regard to criminal penalties under the Act, it means trafficking in listed species.

Criminal penalties increase substantially and can include jail time.

If you consult a printed copy of the Endangered Species Act, you'll notice the dollar penalties on this slide are higher than those included within the Act. That's because the Federal government established Federal Sentencing Guidelines to make sentences more equitable. Federal sentencing guidelines were established in 1984 in order to curtail the discretion of the sentencing judge and bring some sentencing "equity" to punishment of similarly-situated defendants or offenses. What this means is that a judge who doesn't understand something like the ESA, or doesn't take violations of the ESA seriously is nonetheless bound by these sentencing guidelines and cannot "under or over" punish a defendant.

Under the Act, the criminal penalty for violations increased dramatically, rising from \$50,000 to \$100,000 for individuals and up to \$200,000 for corporations.

Recordkeeping violations – attempting to smuggle plants, fish, other animals, or their parts – in or out of the United States can result in fines of up to \$25,000 and six months in jail for each violation. Criminal cases are heard in Federal court.

Upon conviction Federal agencies may take action on grazing licenses and on hunting and fishing permits, and may collect penalties and confiscate items, as shown in this slide.

Those items include **all** items used to commit a crime, such as vehicles, guns, traps, nets, radios, cell phones, computers, and cameras.

For example, if a truck was used during a violation, it can be seized and then forfeited. If a cell phone was used to discuss the violation, it can become government property. Photos posted online? Cameras and computers can be confiscated. Hunting privileges can be lost for a year.

Wildlife also has a monetary value. Besides a fine, a violator may pay restitution for the value of the wildlife taken. Permits, leases, and agreements can be terminated, suspended, or revoked – a significant hardship to a livestock operator who holds a Federal permit to graze livestock

This side-by-side comparison shows the differences between civil and criminal penalties. They can sometimes be difficult to distinguish, and it's often a U.S. Attorney who decides whether to pursue a violation as either civil or criminal. Your nearest law enforcement agent is your first stop when additional investigation of a situation may be needed.

The Endangered Species Act allows rewards to be paid for information leading to an arrest, criminal conviction, civil assessment penalties, or the forfeiture of property from violating the Act. Federal, state, and local government employees aren't eligible for rewards if the information they provide is part of their official duties.

Incidental expenses incurred by someone from taking care of confiscated fish, wildlife, or plants during civil or criminal actions also may be paid.

For example, a care facility for live tigers seized during an investigation into the illegal interstate sale of living listed species may be compensated. For someone who shoots, but doesn't kill, a whooping crane, the rehabilitator provides receipts for care of the bird to the court. If the court rules favorably, the violator must pay the rehabilitator for incurred expenses.

Clean-up costs can also be assessed. If someone sets out poison and a listed species is killed, the violator is charged with the cost of the clean-up and the responsible overseeing agency gets the compensation.